IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1019 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SARJAN LALA YADAV
Versus
STATE OF GUJARAT

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Appearance :
MR RAJESH M AGRAWAL for Applicant
MR YOGESH R AGRAWAL for Applicant
MR AY KOGJE APP for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 21/06/2006

ORAL JUDGMENT

1. Heard learned advocate Mr.R.M.Agrawal for the applicant and learned APP Mr.A.Y.Kogje for the respondent – State of Gujarat.

2. **RULE**. Learned APP Mr.A.Y.Kogje waives service of rule on behalf of the respondent – State of Gujarat. Upon request, the matter was heard finally, today.

3. This Special Criminal Application is preferred to quash an order passed by the learned Additional Sessions Judge, Fast Track Court No.2, Ahmedabad on 14th February, 2006 in Sessions Case No.306/2004 below application at Ex.22, an application given by the learned APP to direct committal of the other case which was registered against the present applicant – accused and some other accused under Sections 120(B), 420, 465, 468, 471 of the Indian Penal Code and under the Indian Telegraph Act. The learned trial Judge, after hearing the parties, directed

that the prosecution instituted in pursuance of C.R.No.I-11/2004 registered before the DCB Police Station on 3rd September, 2004 and pending before the Metropolitan Magistrate, Court No.11 be committed to the Court of Sessions. Ex.22 came to be filed by the learned APP of Sessions Case No.306/2004 in which the present applicant is an accused and Sessions Case No.306/2004 is filed under the Narcotic Drugs and Psychotropic Substance Act for the possession of “charas” found on 7th August, 2004 from the present accused. In the said Sessions Case No.306/2004, learned APP requested that during search, certain other muddamal was found like telephone bills, old wires, diaries by which it was revealed that the present applicant as well as other accused, who was not accused in Sessions Case No.306/2004, were involved in the said offences for which FIR came to be registered separately being C.R.No.I-11/2004 at DCB Police Station. It was requested that the case against the present applicant – accused

under the Narcotic Drugs and Psychotropic Substance Act i.e. Sessions Case No.306/2004 and the other case of C.R.No.I-11/2004 were required to be tried together, because during raid under the Narcotic Drugs and Psychotropic Substance Act, certain muddamal of C.R.No.I-11/2004 was found by DCB Police Station. Learned Judge came to the conclusion that according to learned APP, both the incidents are in the same transaction and of the same type and covered under Section 219 of the Code of Criminal Procedure and committed within one year, the application was required to be allowed and, therefore, learned Judge granted the request of learned APP and hence, this Special Criminal Application.

4. Having heard learned counsels for the parties, it clearly appears that both the cases i.e. Sessions Case No.306/2004 as well as the case which has arisen out of C.R.No.I-11/2004 are altogether distinct and different. Accused No.1 of Sessions Case

No.306/2004 perhaps is not an accused in the prosecution of C.R.No.I-11/2—4. Not only that but one more accused of C.R.No.I-11/2004 is not accused of Sessions Case No.306/2004. The accusation which are made in both the cases are distinguished in the nature and by no stretch of reasoning, it could be said that the offences committed by the accused in Sessions Case No.306/2004 and offences committed by the accused in C.R.No.11/2004 are so same of the type as to be covered under Section 219 of the Code of Criminal Procedure. In fact, such a joint trial where accused are also not same, would result into miscarriage of justice and would be illegality. The order impugned, therefore, is not legal and valid and is required to be quashed. Both the trial should proceed separately.

5. In view of the above, this Special Criminal Application is allowed and the order passed by the learned Additional Sessions Judge, Fast Track Court No.2, Ahmedabad on 14th

February, 2006 below application Ex.22 in Sessions Case No.306/2004 is quashed and set aside. An application at Ex.22 stands dismissed. Rule is made absolute to the above extent. Direct service is permitted.

[J. R. VORA,J.]

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